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SERVICE DATE – NOVEMBER 24, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34554 (Sub-No. 1)

UNION PACIFIC RAILROAD COMPANY–  
TEMPORARY TRACKAGE RIGHTS EXEMPTION–  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: November 17, 2004

By petition filed on September 17, 2004, Union Pacific Railroad Company (UP) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in STB Finance Docket No. 34554<sup>1</sup> to expire on or about December 31, 2004.

UP states in its petition that the trackage rights arrangement exempted in STB Finance Docket No. 34554 is necessary to permit UP to move loaded and empty ballast trains for use in its maintenance-of-way projects. Thus, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage until December 31, 2004.

DISCUSSION AND CONCLUSION

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain

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<sup>1</sup> On September 17, 2004, the Union Pacific Railroad Company (UP) concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary local trackage rights to UP over a BNSF line of railroad between BNSF milepost 579.3 near Mill Creek, OK, and BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles. UP submits that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See Union Pacific Railroad Company–Temporary Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34554 (STB served Oct. 7, 2004). The trackage rights operations under the exemption were scheduled to begin on September 24, 2004.

effective indefinitely, regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and will have no adverse impact on shippers on the line because the trackage rights that are the subject of the exemption are only for the movement of loaded and empty ballast trains for use in UP's maintenance-of-way projects. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34554 to expire on or about December 31, 2004.

The effect of this decision is to terminate the authorization for trackage rights conferred by our rule at 49 CFR 1180.2(d)(7). As noted, UP invoked that rule by notice on September 17, 2004. Because we are required to provide protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, the trackage rights described in STB Finance Docket No. 34554, are exempted, as discussed above, to permit the trackage rights to expire on or about December 31, 2004, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on November 24, 2004.
4. This decision is effective on December 24, 2004.

5. Petitions to stay must be filed by December 6, 2004. Petitions to reopen must be filed by December 14, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey.

Vernon A. Williams  
Secretary